

Union Calendar No. 6

105TH CONGRESS
1ST Session

H. R. 412

[Report No. 105-8]

A BILL

To approve a settlement agreement between the
Bureau of Reclamation and the Oroville-
Tomasket Irrigation District.

MARCH 10, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 1997

Mr. HASTINGS of Washington introduced the following bill; which was referred to the Committee on Resources

MARCH 10, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 9, 1997]

A BILL

To approve a settlement agreement between the Bureau of Reclamation and the Oroville-Tonasket Irrigation District.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Oroville-Tonasket Claim*
5 *Settlement and Conveyance Act”.*

1 **SEC. 2. PURPOSES.**

2 *The purposes of this Act are to authorize the Secretary*
3 *of the Interior to implement the provisions of the negotiated*
4 *Settlement Agreement including conveyance of the Project*
5 *Irrigation Works, identified as not having national impor-*
6 *tance, to the District, and for other purposes.*

7 **SEC. 3. DEFINITIONS.**

8 *As used in this Act:*

9 (1) *The term “Secretary” means the Secretary of*
10 *the Interior.*

11 (2) *The term “Reclamation” means the United*
12 *States Bureau of Reclamation.*

13 (3) *The term “District” or “Oroville-Tonasket*
14 *Irrigation District” means the project beneficiary or-*
15 *ganized and operating under the laws of the State of*
16 *Washington, which is the operating and repayment*
17 *entity for the Project.*

18 (4) *The term “Project” means the Oroville-*
19 *Tonasket unit extension, Okanogan-Similkameen di-*
20 *vision, Chief Joseph Dam Project, Washington, con-*
21 *structed and rehabilitated by the United States under*
22 *the Act of September 28, 1976 (Public Law 94–423,*
23 *90 Stat. 1324), previously authorized and constructed*
24 *under the Act of October 9, 1962 (Public Law 87–762,*
25 *76 Stat. 761), under the Federal reclamation laws*
26 *(including the Act of June 17, 1902 (ch. 1093, 32*

1 *Stat. 388), and Acts supplementary thereto or amend-*
2 *atory thereof).*

3 (5) *The term “Project Irrigation Works”*
4 *means—*

5 (A) *those works actually in existence and*
6 *described in subarticle 3(a) of the Repayment*
7 *Contract, excluding Wildlife Mitigation Facili-*
8 *ties, and depicted on the maps held by the Dis-*
9 *trict and Reclamation, consisting of the realty*
10 *with improvements and real estate interests;*

11 (B) *all equipment, parts, inventories, and*
12 *tools associated with the Project Irrigation Works*
13 *realty and improvements and currently in the*
14 *District’s possession; and*

15 (C) *all third party agreements.*

16 (6)(A) *The term “Basic Contract” means Repay-*
17 *ment Contract No. 14–06–100–4442, dated December*
18 *26, 1964, as amended and supplemented, between the*
19 *United States and the District;*

20 (B) *the term “Repayment Contract” means Re-*
21 *payment Contract No. 00–7–10–W0242, dated No-*
22 *vember 28, 1979, as amended and supplemented, be-*
23 *tween the United States and the District; and*

1 (C) the term “third party agreements” means ex-
2 isting contractual duties, obligations, and responsibil-
3 ities that exist because of all leases, licenses, and ease-
4 ments with third-parties related to the Project Irriga-
5 tion Works, or the lands or rights-of-way for the
6 Project Irrigation Works, but excepting power ar-
7 rangements with the Bonneville Power Administra-
8 tion.

9 (7) The term “Wildlife Mitigation Facilities”
10 means—

11 (A) land, improvements, or easements, or
12 any combination thereof, secured for access to
13 such lands, acquired by the United States under
14 the Fish and Wildlife Coordination Act (16
15 U.S.C. 661–667e); and

16 (B) all third party agreements associated
17 with the land, improvements, or easements re-
18 ferred to in subparagraph (A).

19 (8) The term “Indian Trust Lands” means ap-
20 proximately 61 acres of lands identified on land clas-
21 sification maps on file with the District and Rec-
22 lamation beneficially owned by the Confederated
23 Tribes of the Colville Reservation (Colville Tribes) or

1 *by individual Indians, and held in trust by the Unit-*
 2 *ed States for the benefit of the Colville Tribes in ac-*
 3 *cordance with the Executive Order of April 9, 1872.*

4 *(9) The term “Settlement Agreement” means the*
 5 *Agreement made and entered on April 15, 1996, be-*
 6 *tween the United States of America acting through*
 7 *the Regional Director, Pacific Northwest Region, Bu-*
 8 *reau of Reclamation, and the Oroville-Tonasket Irri-*
 9 *gation District.*

10 *(10) The term “operations and maintenance”*
 11 *means normal and reasonable care, control, operation,*
 12 *repair, replacement, and maintenance.*

13 **SEC. 4. AGREEMENT AUTHORIZATION.**

14 *The Settlement Agreement is approved and the Sec-*
 15 *retary of the Interior is authorized to conduct all necessary*
 16 *and appropriate investigations, studies, and required Fed-*
 17 *eral actions to implement the Settlement Agreement.*

18 **SEC. 5. CONSIDERATION AND SATISFACTION OF OUT-**
 19 **STANDING OBLIGATIONS.**

20 *(a) CONSIDERATION TO UNITED STATES.—Consider-*
 21 *ation by the District to the United States in accordance*
 22 *with the Settlement Agreement approved by this Act shall*
 23 *be—*

24 *(1) payment of \$350,000 by the District to the*
 25 *United States;*

1 (2) *assumption by the District of full liability*
2 *and responsibility and release of the United States of*
3 *all further responsibility, obligations, and liability for*
4 *removing irrigation facilities constructed and reha-*
5 *bilitated by the United States under the Act of Octo-*
6 *ber 9, 1962 (Public Law 87-762, 76 Stat. 761), or*
7 *referenced in section 201 of the Act of September 28,*
8 *1976 (Public Law 94-423, 90 Stat. 1324), and iden-*
9 *tified in Article 3(a)(8) of the Repayment Contract;*

10 (3) *assumption by the District of sole and abso-*
11 *lute responsibility for the operations and maintenance*
12 *of the Project Irrigation Works;*

13 (4) *release and discharge by the District as to*
14 *the United States from all past and future claims,*
15 *whether now known or unknown, arising from or in*
16 *any way related to the Project, including any arising*
17 *from the Project Irrigation Works constructed pursu-*
18 *ant to the 1964 Basic Contract or the 1979 Repay-*
19 *ment Contract;*

20 (5) *assumption by the District of full responsibil-*
21 *ity to indemnify and defend the United States*
22 *against any third party claims associated with any*
23 *aspect of the Project, except for that claim known as*
24 *the Grillo Claim, government contractor construction*
25 *claims accruing at any time, and any other suits or*

1 *claims filed as of the date of the Settlement Agree-*
2 *ment; and*

3 *(6) continued obligation by the District to de-*
4 *liver water to and provide for operations and mainte-*
5 *nance of the Wildlife Mitigation Facilities at its own*
6 *expense in accordance with the Settlement Agreement.*

7 *(b) RESPONSIBILITIES OF UNITED STATES.—In re-*
8 *turn the United States shall—*

9 *(1) release and discharge the District’s obliga-*
10 *tion, including any delinquent or accrued payments,*
11 *or assessments of any nature under the 1979 Repay-*
12 *ment Contract, including the unpaid obligation of the*
13 *1964 Basic Contract;*

14 *(2) transfer title of the Project Irrigation Works*
15 *to the District;*

16 *(3) assign to the District all third party agree-*
17 *ments associated with the Project Irrigation Works;*

18 *(4) continue power deliveries provided under sec-*
19 *tion 6 of this Act; and*

20 *(5) assume full responsibility to indemnify and*
21 *defend the District against any claim known as the*
22 *Grillo Claim, government contractor construction*
23 *claims accruing at any time, and any other suits or*
24 *claims filed against the United States as of the date*
25 *of the Settlement Agreement.*

1 (c) *PROJECT CONSTRUCTION COSTS.*—*The transfer of*
2 *title authorized by this Act shall not affect the timing or*
3 *amount of the obligation of the Bonneville Power Adminis-*
4 *tration for the repayment of construction costs incurred by*
5 *the Federal government under section 202 of the Act of Sep-*
6 *tember 28, 1976 (90 Stat. 1324, 1326) that the Secretary*
7 *of the Interior has determined to be beyond the ability of*
8 *the irrigators to pay. The obligation shall remain charged*
9 *to, and be returned to the Reclamation Fund as provided*
10 *for in section 2 of the Act of June 14, 1966 (80 Stat. 200)*
11 *as amended by section 6 of the Act of September 7, 1966*
12 *(80 Stat. 707, 714).*

13 **SEC. 6. POWER.**

14 *Nothing in this Act shall be construed as having any*
15 *affect on power arrangements under Public Law 94–423 (90*
16 *Stat. 1324). The United States shall continue to provide*
17 *to the District power and energy for irrigation water pump-*
18 *ing for the Project, including Dairy Point Pumping Plant.*
19 *However, the amount and term of reserved power shall not*
20 *exceed, respectively—*

21 (1) *27,100,000 kilowatt hours per year; and*

22 (2) *50 years commencing October 18, 1990.*

23 *The rate that the District shall pay the Secretary for such*
24 *reserved power shall continue to reflect full recovery of Bon-*
25 *neville Power Administration transmission costs.*

1 **SEC. 7. CONVEYANCE.**

2 (a) CONVEYANCE OF INTERESTS OF UNITED
 3 STATES.—Subject to valid existing rights, the Secretary is
 4 authorized to convey all right, title, and interest, without
 5 warranties, of the United States in and to all Project Irriga-
 6 tion Works to the District. In the event a significant cul-
 7 tural resource or hazardous waste site is identified, the Sec-
 8 retary is authorized to defer or delay transfer of title to
 9 any parcel until required Federal action is completed.

10 (b) RETENTION OF TITLE TO WILDLIFE MITIGATION
 11 FACILITIES.—The Secretary will retain title to the Wildlife
 12 Mitigation Facilities. The District shall remain obligated
 13 to deliver water to and provide for the operations and
 14 maintenance of the Wildlife Mitigation Facilities at its own
 15 expense in accordance with the Settlement Agreement.

16 (c) RESERVATION.—The transfer of rights and inter-
 17 ests pursuant to subsection (a) shall reserve to the United
 18 States all oil, gas, and other mineral deposits and a perpet-
 19 ual right to existing public access open to public fishing,
 20 hunting, and other outdoor recreation purposes, and such
 21 other existing public uses.

22 **SEC. 8. REPAYMENT CONTRACT.**

23 Upon conveyance of title to the Project Irrigation
 24 Works notwithstanding any parcels delayed in accordance
 25 with section 7(a), the 1964 Basic Contract, and the 1979

1 *Repayment Contract between the District and Reclamation,*
2 *shall be terminated and of no further force or effect.*

3 ***SEC. 9. INDIAN TRUST RESPONSIBILITIES.***

4 *The District shall remain obligated to deliver water*
5 *under appropriate water service contracts to Indian Trust*
6 *Lands upon request from the owners or lessees of such land.*

7 ***SEC. 10. LIABILITY.***

8 *Upon completion of the conveyance of Project Irriga-*
9 *tion Works under this Act, the District shall—*

10 *(1) be liable for all acts or omissions relating to*
11 *the operation and use of the Project Irrigation Works*
12 *that occur before or after the conveyance except for the*
13 *Grillo Claim, government contractor construction*
14 *claims accruing at any time, and any other suits or*
15 *claims filed as of the date of the Settlement Agree-*
16 *ment;*

17 *(2) absolve the United States and its officers and*
18 *agents of responsibility and liability for the design*
19 *and construction including latent defects associated*
20 *with the Project; and*

21 *(3) assume responsibility to indemnify and de-*
22 *fend the United States against all claims whether now*
23 *known or unknown and including those of third party*
24 *claims associated with, arising from, or in any way*

1 *related to, the Project except for the Grillo Claim, gov-*
 2 *ernment contractor construction claims accruing at*
 3 *any time, and any other suits or claims filed as of*
 4 *the date of the Settlement Agreement.*

5 **SEC. 11. CERTAIN ACTS NOT APPLICABLE AND TERMI-**
 6 **NATION OF MANDATES.**

7 (a) *RECLAMATION LAWS.*—All mandates imposed by
 8 *the Reclamation Act of 1902, and all Acts supplementary*
 9 *thereto or amendatory thereof, including the Reclamation*
 10 *Reform Act of 1982, upon the Project Irrigation Works shall*
 11 *be terminated upon the completion of the transfers as pro-*
 12 *vided by this Act and the Settlement Agreement.*

13 (b) *RELATIONSHIP TO OTHER LAWS.*—The transfer of
 14 *title authorized by this Act shall not—*

15 (1) *be subject to the provisions of chapter 5 of*
 16 *title 5, United States Code (commonly known as the*
 17 *“Administrative Procedure Act”); or*

18 (2) *be considered a disposal of surplus property*
 19 *under the Federal Property and Administrative Serv-*
 20 *ices Act of 1949 (40 U.S.C. 471 et seq.) and the Sur-*
 21 *plus Property Act of 1944 (50 U.S.C. App. 1601 et*
 22 *seq.).*

23 (c) *DEAUTHORIZATION.*—Effective upon transfer of
 24 *title to the District under this Act, that portion of the*
 25 *Oroville-Tonasket Unit Extension, Okanogan-Similkameen*

1 *Division, Chief Joseph Dam Project, Washington, referred*
2 *to in section 7(a) as the Project Irrigation Works is hereby*
3 *deauthorized. After transfer of title, the District shall not*
4 *be entitled to receive any further Reclamation benefits pur-*
5 *suant to the Reclamation Act of June 17, 1902, and Act*
6 *supplementary thereto or amendatory thereof.*